

## Chapter 7 – Discipline and Termination of Employment

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### Chapter 7 Table of Contents

<u>Section</u>	<u>Page</u>
I. Layoff .....	138
A. Definitions .....	138
B. Layoff Procedures .....	139
II. Grievance Procedure.....	142
A. Access to Procedure .....	142
B. Grievable Issues .....	143
C. Conciliation .....	144
D. Management Steps .....	144
E. Hearing .....	147
F. Compliance .....	150
III. Termination / Separation.....	152
A. Types of Termination/Separation .....	152
B. Benefits upon Termination / Separation.....	153
C. Recording Date of Termination / Separation and Accrued Leave.....	153
IV. Unemployment Compensation.....	154
A. Definitions .....	154
B. Eligibility for Benefits .....	154
C. Filing a Claim .....	155
V. COBRA Continuation of Health Care Coverage.....	156
A. Definitions .....	156
B. Qualifying Events .....	157
C. Additional Information on COBRA Coverage.....	157
D. Notice by Employee.....	158
E. Notice of Qualifying Event .....	158
F. Continued Plan Participation.....	158
G. Premium Payments .....	159
H. Coverage Ends.....	160
I. Other Provisions.....	161
J. HIPAA Benefits .....	161

[Continued]

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**Chapter 7 – Discipline and Termination of Employment**

---

**VI. Retirement.....164**

**A. Retirement.....164**

## Chapter 7 – Discipline and Termination of Employment

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### Section I Layoff

#### Purpose

The purpose of this policy is to provide the procedures to be used when it becomes necessary to reduce the number of employees in the workforce and/or to reconfigure the workforce including eliminating positions for which there is no funding or which are obsolete.

#### Scope

This policy applies to all probationary, regular, restricted, temporary, and emergency employees.

#### A. Definitions

1. Demotion in Lieu of Layoff

Position in a lower pay grade accepted by an employee when placed in layoff status.

2. Emergency Employee

Person employed in a permanent, restricted, temporary, seasonal, or emergency position with the understanding that the employment is of limited duration within a twelve-month period.

3. Former Position

Position held by the employee prior to the current position.

4. Layoff Unit

A group of employees designated for application of layoff that may be defined by various combinations of organizational structure, job classification, program area, and status of position funding.

5. Minimally Qualified

Possession of the necessary knowledge, skills, and abilities (KSAs) and other bona fide job requirements such that the employee can successfully perform the job duties of the position within six months.

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## Chapter 7 – Discipline and Termination of Employment

---

### 6. Placement Option

Position available as an alternative to layoff.

### 7. Probationary Employee

Person employed in a permanent or restricted position while serving a twelve-month probationary period as determined by the LDSS.

### 8. Recall

Within six months after being laid off, an employee may be placed in the position classification formerly held without competitive recruitment.

### 9. Regular Employee

Person employed in a permanent position.

### 10. Restricted Employee

Person employed in a restricted position with the understanding that the employment can be no longer than the stated duration of the position.

### 11. Seniority

Years of continuous probationary- and regular-status employment in a permanent position(s) in the same LDSS.

### 12. Temporary Employee

Person employed in a permanent, restricted, temporary, or seasonal position with the understanding that the employment is of limited duration typically no longer than a twelve-month period.

### 13. Valid Vacancy

A vacant, fully funded, permanent or restricted vacant position that has been designated by the LDSS Board to be filled through placement or hiring.

## **B. Layoff Procedure**

The LDSS conducts the following process in implementing a layoff or reorganization:

1. Freezes hiring on valid vacancies.

## **Chapter 7 – Discipline and Termination of Employment**

---

2. Identifies layoff unit(s) to be affected and defines the unit(s) so as to identify the potentially affected positions.
3. Identifies valid vacancies that can be used as placement options.
4. Abolishes vacant positions in the defined layoff unit.
5. Designates for termination any emergency, temporary, or restricted employees in the defined layoff unit regardless of the types of positions they occupy.
6. Determines which regular employee(s) will be designated for layoff by using the following factors in order of sequence to rank the employees:
  - a. Review past performance documentation and any disciplinary history.
  - b. Seniority.
7. Provides employees with placement options once they have been identified. Employees must be minimally qualified for the positions. These placement options may result in a demotion, reduction to part-time status, and/or movement to restricted status. To be placed in a valid vacancy the employee must be minimally qualified.
8. Notifies the affected employee they will be laid off at a certain date and provides them with COBRA notices when no placement option materializes.
9. Provides laid off employees with recall rights (the right of a laid off employee to be placed in a valid vacancy at a future time without going through a competitive recruitment process). Recall rights exist only for a six month period following layoff.
10. Abolishes the former positions of those employees who have been placed, laid off, or otherwise terminated.

## **Chapter 7 – Discipline and Termination of Employment**

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## Chapter 7 – Discipline and Termination of Employment

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### Section II Grievance Procedure

#### Purpose

In accordance with §§ 63.2-219 and 15.2-1507 of the *Code of Virginia*, an LDSS must provide its employees with access to a grievance for them to have a means to seek redress from the unfair application of policy, discriminatory or illegal employment practices, disciplinary actions, and/or retaliation. There are three alternative procedures that an LDSS may use. This procedure is for use by an LDSS that is not under the grievance procedure of a locality or under a grievance procedure adopted by the local board.

#### A. Access to Procedure

1. Except as noted below, employees are provided access to the grievance procedure provided that the grievance is initiated within thirty (30) calendar days from the event or action which gave rise to the grievance. The Director, as provided in § 63.1-219 of the *Code of Virginia*, has access to the Grievance Procedure.
2. The following employees do not have access to the grievance procedure:
  - a. Probationary employees;
  - b. An employee electing to proceed pursuant to any other state procedure;
  - c. An employee who has voluntarily resigned; and
  - d. An employee who has been hired for a term.
  - e. An employee who is exempted under §15.2-1507 of the *Code of Virginia*.
  - f. An employee who is in a restricted, seasonal, emergency, or temporary position.
3. An employee who has been terminated shall not have access to the grievance procedure after the date of termination, except to grieve a removal resulting from formal discipline, unsatisfactory job performance, or an involuntary resignation. As with other grievances, grievance initiated after termination/resignation must be initiated within thirty (30) calendar days of the dismissal date. Any grievance initiated by an employee prior to separation from the LDSS may, at the employee's option, continue through the grievance procedure.
4. If an employee is denied access to the grievance procedure, the decision may be appealed to the circuit court having jurisdiction in the locality in which the employee is or was employed for a hearing on whether the employee has access.

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## Chapter 7 – Discipline and Termination of Employment

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5. An employee who utilizes the grievance procedure, or participates in the process, is protected from retaliation for such participation.

### **B. Grievable Issues**

#### **1. Grievable Issues**

A complaint or dispute by an employee relating to one of the following is grievable:

- a. Disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance.
- b. Unfair application of personnel policies, procedures, rules, and regulations.
- c. Discrimination on the basis of race, color, religion, marital status, age, disability, national origin, sex; pregnancy, or political affiliation.
- d. Acts of retaliation as a result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, or abuse to the Hotline.

#### **2. Not Grievable Issues**

The LDSS has the exclusive right to manage the affairs and operations of government. Accordingly, the following actions are nongrievable:

- a. Establishment and revision of wages or salaries, position classification or general benefits.
- b. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content.
- c. Contents of ordinances, statutes or established personnel policies, procedures, rules and regulations.
- d. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
- e. Methods, means and personnel by which work activities are to be performed.
- f. Relief of employees from duties in emergencies.



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## Chapter 7 – Discipline and Termination of Employment

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- g. Termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition that affects an employee who has been reinstated as a result of a grievance. If there was a valid business reason for the action and the employee was notified of the reason in writing prior to the effective date of the present adverse action, the LDSS action shall be upheld.

### C. Conciliation

Most employee concerns or complaints can be resolved informally through communication between the employee and supervisor. Accordingly, employees are encouraged to take their complaints to the immediate supervisor to seek a resolution. Mediation may be available as an alternative to pursuing a complaint through the grievance procedure. In order for an employee participating in mediation not to forfeit the right to pursue a grievance, the employee must have an agreement reached with the LDSS allowing an extension of the time period to file a grievance. To avoid any misunderstanding, the agreement should be in writing.

### D. Management Steps

Employees may always pursue grievable issues through the grievance procedure, and supervisors when requested are to provide them with the necessary forms and a copy of the grievance procedure.

#### 1. General Provisions

##### a. Time Periods

The use of the grievance procedure requires that certain actions be taken within specified periods of time. When used, “work days” means the days that the LDSS is open for business; official office closings and weekends do not count as work days. If for any reason an action cannot be completed within the time period provided, the employee or the LDSS may request an extension; if an extension is granted it should be reduced to writing to reflect the agreement.

- b. The grievance procedure has three steps. The three grievance steps may not apply in all circumstances, however.

##### (1) Grievances initiated by the Director:

If the grievance is initiated by the Director the first step of the grievance procedure starts with the local DDS Board (hereafter “Board”). After the written grievance is submitted to the Board, the Board provides a written response. If the Director is not satisfied with the written response, he may request the third step meeting with the Board. When a grievance is initiated by the Director, the Director’s responsibilities in this procedure shall be executed by the Board.

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## Chapter 7 – Discipline and Termination of Employment

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(2) Grievances involving discrimination or retaliation:

If the grievance involves discrimination or retaliation by the immediate supervisor the employee may initiate the grievance with the next management level. If the grievance is initiated with the Director, the first and second steps of the procedure are collapsed and the oral and written initiation of the grievance is with the Director.

2. First Step

- a. An employee who has a complaint is encouraged to discuss it directly with the immediate supervisor as early as possible. However, the time spent informally attempting to resolve the complaint does not delay the time period to initiate a grievance.
- b. An employee must initiate the written grievance with the immediate supervisor within thirty (30) calendar days after the event or action which is the basis for the grievance. The written grievance may be presented in person, faxed, or mailed to the immediate supervisor.
- c. The written grievance should include the date, the facts in support of the complaint, and the relief requested.
- d. The supervisor must meet with the employee within five (5) work days of receipt of the written grievance. The only persons present at this meeting are the employee, the supervisor, and appropriate witnesses.
- e. The supervisor must provide a written reply to the employee within five (5) work days following the meeting.

3. Second Step

- a. If the supervisor's reply is not acceptable and the employee desires to continue the grievance, the employee may request in writing a meeting with the Director.
- b. The request must be received within five (5) work days.
- c. The Director shall meet with the employee within five (5) work days of receipt of the employee's request and reply in writing to the grievance within five (5) work days following the second step meeting.

4. Third Step

- a. If the Director's reply is not acceptable and the employee desires to continue the grievance, the employee may request in writing a meeting with the Board.

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## Chapter 7 – Discipline and Termination of Employment

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- b. The request must be received within five (5) work days.
- c. The Board, or the personnel committee of the Board, shall meet with the employee within five (5) work days of receipt of the employee's request and reply in writing to the grievance within five (5) work days following the third step meeting.
- d. The persons that may be present at this meeting are the employee, the Board members, appropriate witnesses, and at the employee's option, a representative for the employee.
- e. If the employee is represented by legal counsel, the LDSS likewise has the option of being represented by counsel. The role of the representative or legal counsel is to assist the employee and is not to be actively involved in advocating or arguing on behalf of the employee or to examine witnesses.
- f. Witnesses are not permitted in the meeting except to give testimony.
- g. If the Board's reply is not acceptable, the employee may request to advance the grievance to a hearing. The employee must make this request in writing within five (5) work days of receipt of the reply from the Board.

### 5. Qualifying the Grievance for the Hearing

a. Before the grievance advances to a panel hearing, the Director, on behalf of the Board, must determine whether the grievance qualifies for a hearing within five (5) work days of receipt of the request. The grievance should qualify for a hearing if it claims, and the facts taken as a whole, raise a sufficient question as to whether an adverse employment action has occurred as a result of one or more of the following:

- (1) Unfair application or misapplication of state and agency personnel policies, procedures, rules, and regulations;
- (2) Discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin, or sex;
- (3) Arbitrary or capricious performance evaluation;
- (4) Retaliation for participating in the grievance process, complying with any law or reporting a violation of such law to a governmental authority, seeking to change any law before Congress or the General Assembly, reporting an incidence of fraud, abuse, or gross mismanagement, or exercising any right otherwise protected by law; or
- (5) Informal discipline – for example, terminations, transfers, assignments, demotions, and suspensions – which are not accompanied by formal discipline (a Written Notice) but which are taken primarily for disciplinary reasons.

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## Chapter 7 – Discipline and Termination of Employment

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- b. If it is determined that an issue does not qualify for a hearing, the employee may appeal the decision to the circuit court having jurisdiction in the locality where the employee is employed.
  - (1) An appeal is made by filing a notice of appeal with the Board within five (5) work days from the date of receipt of the decision.
  - (2) Within five (5) work days thereafter, the Director, on behalf of the Board, shall transmit to the Clerk of the Court a copy of the full grievance record, the decision of the Director, the notice of appeal, and any exhibits.
  - (3) A list of evidence furnished to the court shall also be furnished to the employee.
  - (4) The Court is required to schedule the hearing on this issue within thirty (30) days; however, a scheduling request must be made to the Clerk of the Court.

### E. Hearing

If an issue is determined to qualify for a hearing, the grievance will proceed to a hearing before a grievance panel or an administrative hearing officer as provided below:

- 1. In cases involving a termination or retaliation, the Board may choose to use an administrative hearing officer. If such hearing officer is used, the hearing officer shall be appointed from a list maintained by the Executive Secretary of the Virginia Supreme Court. The costs for the hearing officer will be borne by the LDSS. If a hearing officer is used, the provisions in the following sections that relate to panel members shall apply to the hearing officer in the same manner.
- 2. For all hearings, except those for which a hearing officer is appointed, the grievance panel shall be formed as follows:
  - a. A panel shall consist of three members:
    - (1) One member appointed by the employee;
    - (2) One member appointed by the LDSS; and
    - (3) A third member selected by agreement of the two panel members or if the two do not agree by appointment of the Chief Judge of the Circuit Court in the jurisdiction in which the grievance arose.
  - b. Both the employee and the LDSS must select a panel member within five (5) work days of receiving notice that the grievance qualifies for a hearing. Each

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## Chapter 7 – Discipline and Termination of Employment

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party shall notify the other of the name, address, telephone, and e-mail address of the panel member as soon as possible.

- c. The two panel members shall discuss the selection of a third member. If agreement can not be reached within five (5) work days, the panel members shall notify the Chairman of the Board and the employee of their failure to agree. The Chairman of the Board will notify the Chief Judge of the Circuit Court that agreement was not reached and request that the Judge appoint the third panel member.
- d. The third panel member shall be the chairperson of the panel.
- e. To insure an impartial panel, such panels shall not be composed of any person having direct involvement with the grievance being heard or with the problem giving rise to the grievance.
- f. The full panel selection should be completed by the tenth (10th) work day following qualification. However, this time limit may be extended in instances where the agreement on a third panel member has not been reached.
- g. Persons excluded from serving as a panel member:
  - (1) Any person having a direct involvement in the grievance or the complaint or dispute giving rise to the grievance;
  - (2) Supervisors and managers of the grievant and the Director;
  - (3) Persons residing in the same household as the grievant;
  - (4) Relatives or the spouse of a party; and
  - (5) Attorney who has any involvement in the grievance or the dispute.

### 3. Communication with Panel Members or Hearing Officer

The parties should not discuss the substance of any grievance or the problem giving rise to the grievance with any panel member or the hearing officer prior to the grievance hearing. All matters requiring the attention of the panel should be communicated in writing with copies to all parties.

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## **Chapter 7 – Discipline and Termination of Employment**

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### **4. Hearing Date**

The full panel or hearing officer will set the date, time and place for the hearing, which should be held within ten (10) work days following the selection of the full panel. The panel chairperson shall immediately notify the employee and the LDSS of the hearing date. The panel shall conduct the hearing in the locality where the employee is employed, unless the panel unanimously decides that another location is appropriate.

### **5. Case Presentation**

The employee and the LDSS may be represented by legal counsel, or other representative, at the panel hearing. Such representatives may examine, cross-examine, question, or present evidence before the panel. The representative does not have to be an attorney.

### **6. Hearing Decision**

- a. The panel, in rendering its decision, shall be guided, but not necessarily bound by the relief specified by the employee in the grievance. The panel shall render its decision in writing within thirty (30) calendar days of the hearing and distribute copies to the employee and the Board. The decision shall be decided by a majority vote and shall be set forth in writing. The decision shall be final and binding provided that the relief is consistent with the provisions of law and written policy.
- b. The Board is responsible for assuring that the hearing decision is implemented. The question of whether the relief granted is consistent with law and/or written policy shall be determined by the Board, unless the Board has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth Attorney.
- c. Either party may petition the circuit court in the jurisdiction where the employee is employed for an order requiring implementation of the decision of the panel.
- d. If a written request to reconsider the panel decision is submitted to the panel chairperson or hearing officer within five (5) work days of receipt of the decision, the panel, by majority vote or the hearing officer, may elect to review its decision and/or reopen the hearing for good cause shown.

### **7. Grievance Hearing Procedure**

- a. The panel (or hearing officer as appropriate) shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing.
- b. The panel or hearing officer may at the beginning of the hearing ask for statements clarifying the issues involved.

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## Chapter 7 – Discipline and Termination of Employment

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- c. Exhibits may be received in evidence and when so received, shall be marked and made part of the record.
- d. The employee and Director, or their representatives, shall then present their claims and proofs and witnesses who shall submit to questions or other examination. In a grievance involving a disciplinary action, the LDSS shall present its case first. In all other grievances, the employee shall proceed first. The panel or hearing officer may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties for presentation of any material or relevant proofs.
- e. The parties shall produce such additional evidence as the panel or hearing officer may deem necessary to an understanding and determination of the dispute. The panel or hearing officer shall be the judge of the relevance and materiality of the evidence offered. All evidence shall be taken in the presence of the full panel or hearing officer and of the parties.
- f. The hearing decision shall be final if consistent with law and policy.
- g. The decision shall be made in writing no later than fifteen (15) work days after the completion of the hearing.
- h. Copies of the decision shall be transmitted to both parties.

### **F. Compliance**

The failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by the employee shall be made to the Director, unless the Director is the grievant. If the Director is the grievant, the notification should be made to the Board.

The Director shall determine compliance issues unless the grievant is the Director. If the Director is the grievant the Board shall make the determination on compliance. Compliance determinations may be challenged by the grievant if a petition is filed with the circuit court in the jurisdiction in which the employee is employed within thirty (30) calendar days of the compliance determination.

The Virginia Department of Social Services has no role or responsibility in assuring that the LDSS has complied with the grievance procedure steps.

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## **Chapter 7 – Discipline and Termination of Employment**

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## **Chapter 7 – Discipline and Termination of Employment**

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## Chapter 7 – Discipline and Termination of Employment

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### Section III Termination / Separation

#### Purpose

The purpose of this policy is to identify the types of separation from the LDSS and their related procedures and to advise terminating employees of benefits to which they may be entitled.

#### Scope

This policy applies to all employees.

#### A. Types Of Termination / Separation

##### 1. Resignation

- a. Resignation is an employee's voluntary separation from employment with the LDSS.
- b. Advance Notice
  - (1) An employee who plans to resign is asked to provide the Director with at least two weeks notice.
  - (2) An employee's failure to give reasonable notice of the resignation may be documented in the employee's personnel file.
  - (3) Once the resignation has been accepted by the LDSS, it is final.

##### 2. Discharge

Discharge is an employee's involuntary termination of employment with the LDSS as a result of unsatisfactory performance or misconduct. (See Standards of Conduct, Performance Evaluations policies.)

##### 3. Layoff

Layoff is a separation from employment with the LDSS as a result of a workforce reduction. (See Layoff policy.)

## Chapter 7 – Discipline and Termination of Employment

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### 4. Separation

Separation is the termination of employment with the LDSS upon the employee's failure to return to work following the expiration of a period of leave without pay. For purposes of unemployment compensation, this separation will be treated as job abandonment if notice of intent not to return was not provided to the LDSS.

### **B. Benefits upon Termination / Separation**

In addition to retirement benefits, employees separating from employment with the LDSS may be entitled to the following:

#### 1. Payment for Accrued Leave

Employees separating from employment with the LDSS may be entitled to receive payments for accrued annual, sick, compensatory and/or overtime leave, in accordance with the various leave policies.

#### 2. Health Insurance

Employees separating from employment with the LDSS may be eligible to continue health plan coverage under the provisions of the Continuation of Health Plan Coverage Policy.

### **C. Recording Date of Termination / Separation and Accrued Leave**

#### 1. Employee Not on Leave

The termination date of an employee is the last day the employee worked.

#### 2. Employee on Leave

The termination date of an employee on leave with pay or without pay is the last day that the employee was on leave.

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## Chapter 7 – Discipline and Termination of Employment

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### Section IV Unemployment Compensation

#### Purpose

The purpose of this policy is to notify employees of benefits to which they may be entitled if the employee is totally or partially unemployed as defined under the Virginia Workers Compensation Act.

#### Scope

This policy applies to all employees.

#### A. Definitions

##### 1. Totally Unemployed

An individual is “totally unemployed” if during any week no services are performed and receives no wages or salary.

##### 2. Partially Unemployed

An individual is “partially unemployed” if during any week he works less than his full time hours and receives less than his full time wages or salary due to lack of work.

#### B. Eligibility for Benefits

To qualify for benefits, an individual must meet four criteria:

##### 1. Monetary Eligibility

Have sufficient wages from covered employment during the first four of the last five completed calendar quarters. Once a claim is established it remains in effect for one year.

##### 2. Reason for Separation

The cause for the termination cannot be deliberate or intentional misconduct or a labor dispute. An employee who voluntarily resigns a job because they believe their new job will advance their career, and then gets terminated, qualifies for unemployment.

## **Chapter 7 – Discipline and Termination of Employment**

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### **3. Able and Available for Work**

The individual must be physically and mentally capable of performing work and must be willing to accept such work without undue restrictions.

### **4. Waiting Period**

There is a one week waiting period before an individual is eligible for benefits.

### **5. Payment for Leave Balances at Termination**

Severance, annual leave, sick leave, special duty leave, and other paid leave that is received at termination will be deducted from the weekly benefit amount in all weeks it is payable. The LDSS allocates such payments against future earnings on a weekly basis. Such payments will be reported to the Virginia Employment Commission. Compensatory leave (overtime leave) is not allocated and the accumulated amount will be paid in a lump sum in the pay period following termination.

## **C. Filing a Claim**

### **1. Virginia Employment Commission**

A claim for benefits may be made at one of the local offices of the Virginia Employment Commission or on the Internet by accessing the VEC at [www.vec.state.va.us](http://www.vec.state.va.us).

### **2. Interpreters**

If an individual has difficulty comprehending English or has a disability, the VEC provides interpreters upon request. Telecommunications Device for Deaf (TDD) or Text Telephone (TTY) users can access the VEC by calling 1-800-828-1120.

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## Chapter 7 – Discipline and Termination of Employment

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### Section V COBRA Continuation of Health Care Coverage

#### Purpose

The purpose of this policy is to notify employees of when health care and/or flexible medical spending accounts may be continued after an event which results in the loss of coverage.

#### Scope

This policy applies to all employees who participate in the LDSS health plan or in its flexible spending accounts.

#### A. Definitions

1. LDSS

The LDSS or its Plan Administrator.

2. Gross Misconduct

Egregious or willful conduct in disregard of the LDSS' interest, e.g., violence in workplace, mishandling of LDSS funds.

3. Qualified Beneficiary Employee

An employee who loses plan coverage when a qualifying event occurs such as, hours of employment are reduced, placed on leave without pay, or employment terminates for any reason other than gross misconduct.

4. Qualified Beneficiary Spouse

A spouse or former spouse of an employee who was participating in the health plan or other medical benefit on the day before coverage under the plan is lost because of a qualifying event.

5. Qualified Beneficiary Dependent

A dependent as defined under the policy who was participating in the health plan or other medical benefit on the day before coverage is lost because of a qualifying event. In addition any child born to or placed for adoption with a covered employee during the period of COBRA continuation coverage is considered a qualified beneficiary.

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## Chapter 7 – Discipline and Termination of Employment

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### 6. Qualified Event

An event that will result in the loss of plan coverage unless continued coverage is elected.

### 7. Qualified Health Plan

A group health plan that provides health and/or medical care. Such plan may include certain § 125 cafeteria plans (e.g., flexible health care spending accounts); health reimbursement arrangements, employee assistance programs, and long term care plans.

## B. Qualifying Events

### 1. For Employee

When coverage is lost because an employee's hours of work are reduced, is on Leave without Pay, or employment ends for any reason other than gross misconduct.

### 2. For Employee's Spouse

When the employee dies or the employee's hours are reduced, employment ends for any reason other than gross misconduct, or becomes eligible for Medicare benefits or when divorce or legal separation occurs.

### 3. Qualifying Event for Dependent of Employee

The employee dies, the employee's hours of employment are reduced, employee's employment ends for any reason other than gross misconduct, employee becomes entitled to Medicare, parents become divorced or legally separated, or the dependent is no longer eligible for dependent status.

## C. Additional Information on COBRA Coverage

If an employee has questions on COBRA Continuation Coverage, the employee should contact:

Name:

Address:

Telephone number:

E-Mail Address:

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## **Chapter 7 – Discipline and Termination of Employment**

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### **D. Notice by Employee**

All notices that an employee and/or the qualified beneficiaries must give are also to be made to the contact person listed in Section V. An employee and/or the qualified beneficiaries must also notify the contact person of any change in status or address of the qualified beneficiaries or the employee.

### **E. Notice of Qualifying Event**

An employee and/or the qualified beneficiaries must notify the LDSS of a qualifying event within 60 days of the qualifying event. Notification should be made to the contact person listed in Section V. Upon receipt of such notice, the LDSS will provide the employee and qualified beneficiaries with an election of COBRA continuation coverage form.

### **F. Continued Plan Participation**

#### **1. Election**

Employees and other qualified beneficiaries each have the right to independently make a COBRA election to continue health benefit coverage. A covered employee or the covered employee's spouse may, however, elect on behalf of all other qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child. An employee and/or each qualified beneficiary may waive COBRA coverage independently of another. (E.g., the employee decides not to elect continuation coverage but his spouse does.)

#### **2. Time Period to Make Election**

An employee and/or qualified beneficiary has 60 days from receipt of the Election Notice or the date of loss of coverage, whichever is later, to make an election. If an election is made during this time period, the coverage dates back to the qualifying event and there is no gap in coverage.

#### **3. Revocation of Waiver of Coverage**

If an employee or qualified beneficiary waives COBRA coverage, the waiver may be revoked at any time during the 60 day election period. If such revocation of the waiver should occur, continuation coverage begins on the date the waiver is revoked, not the date of the qualifying event (this means that there will be a gap in coverage).



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## Chapter 7 – Discipline and Termination of Employment

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### 4. Length of Continuation Coverage

Continuation coverage is for a period of 18 months unless the employee leaves for military duty. Employees leaving for military duty have the right to elect up to 24 months of coverage. This period can be extended for an additional 11 months if a qualified beneficiary has been determined to be disabled by the Social Security Administration during the continuation period. The disabled qualified beneficiary must provide the LDSS with notice of the disability determination within 60 days of such determination and if the determination of disability is within the initial 18 month continuation period, participation will be extended for another 11 months.

### 5. Second Qualifying Event

If during the COBRA coverage period, a second qualifying event occurs, the employee and/or qualified beneficiary may elect an additional 18 months of coverage (total 36 months). Notice of a second qualifying event must be given to the LDSS within 60 days.

### 6. Date Coverage Begins

Coverage begins on the date that coverage would otherwise have been lost, provided that an election is made within the election period and the premium payments are made in full and on a timely basis. For example, if the qualifying event is on August 1 and the election of coverage is made on September 19, all “covered” medical expenses that were incurred during the August 1 through September 19 period would be paid for under the plan, provided full payment of the premiums is made.

### 7. Failure to Elect Continuation Coverage

If an employee waives making an election, and coverage is lost, and if the employee or qualified beneficiary joins another group health plan within 63 days, pre-existing exclusions will not apply under the new plan.

## G. Premium Payments

### 1. First Payment

If continuation coverage is elected, the first payment must be made within 45 days of the date of the election. The first payment due will be for the full amount of premiums owed from the date of the qualifying event to the date payment is made.

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## **Chapter 7 – Discipline and Termination of Employment**

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### **2. Subsequent Payments**

Each monthly payment following the initial payment must be made by the due date or coverage will cease. There is a 30 day grace period which, if a late payment is made within that period, coverage will be reinstated.

### **3. Amounts of Payment**

The employee and/or qualified beneficiary must pay 100% of the premium. The LDSS may charge an administrative fee of 2%; if this is done the premium payments would be 102% of the premium costs. If disability occurs, the plan could charge 150% of the premium costs after the initial 18 month period.

### **4. Termination for Failure to Pay Premiums**

The failure to make a timely payment will be cause for termination of continuation coverage.

## **H. Coverage Ends**

### **1. Terminates at End of Maximum Coverage Period**

Coverage will end at the end of the maximum period of coverage, 18 months in most instances, 29 months if a qualified beneficiary is disabled, or 36 months if a second qualifying event occurred.

### **2. Coverage Can End Earlier Than Maximum Coverage Period**

Coverage may end earlier than the maximum coverage period if one the following should occur:

- a. Premiums are not paid on a timely basis.
- b. The LDSS ceases to maintain any group health plan.
- c. If after a COBRA election, coverage is obtained in another employer group health plan. However, if the coverage in another group health plan was obtained prior to the election, continuation coverage can not be terminated by the LDSS; or if the coverage in another plan has pre-existing exclusions or limitations or is not as comprehensive as the COBRA coverage, the LDSS cannot terminate coverage.
- d. If after a COBRA election, Medicare coverage is obtained during the continuation period.

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## Chapter 7 – Discipline and Termination of Employment

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### I. Other Provisions

#### 1. Open Enrollment

An employee or other qualified beneficiary may add individuals to the health plan during the open enrollment period on the same terms as regular plan participants. These added insureds, however, do not have COBRA rights and their participation in the plan is only as long as the qualified beneficiary remains eligible and includes them in the plan.

#### 2. Appeals on Denial of Coverage

If a claim for plan benefits is submitted and is denied, the covered individual will receive notice of the reason for the denial. This notice will be in writing and must be provided within 90 days of the submittal of the claim. The notice will state the reasons for the denial, any additional information needed to support the claim, and procedures for appealing the denial. The covered individual has 60 days to appeal the denial and within 60 days the plan will provide a decision on the appeal. If the claim is still denied, the covered individual can contact the State Corporation Commission, Insurance Division, in Richmond to find out information on how to appeal the plan's denial of coverage.

#### 3. Family and Medical Leave

An employee who is on Family and Medical Leave is entitled to have health plan coverage continue for the duration of the leave on the same payment terms as if the employee had been working. This coverage is not the same as COBRA coverage. Family and Medical Leave is not a qualifying event under COBRA; however, if at the end of the Family and Medical Leave the employee notifies the employer that he or she will not be returning to the position, COBRA continuation rights commence at that point.

### J. HIPAA Benefits

#### 1. Conversion Rights

Some plans permit a covered individual to convert to an individual policy at the end of COBRA coverage. If the LDSS's plan permits such an election, the employee and/or covered beneficiaries will receive a notice of such option no later than 180 days before the end of coverage. The premium for the individual policy may cost more than the COBRA coverage and may provide fewer benefits. If an election to an individual policy is made, pre-existing conditions can not be imposed on the coverage. The conversion option is not available if the qualified beneficiary terminates coverage prior to the end of the coverage period.

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## **Chapter 7 – Discipline and Termination of Employment**

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### **2. Enrollment in Spouse's Plan**

If COBRA coverage is exhausted, HIPAA (the Health Insurance Portability and Accountability Act) gives a qualified beneficiary a right to enroll in a spouse's plan for which the beneficiary would otherwise be eligible to participate. The beneficiary does not have to wait for the open enrollment period to join. However, the beneficiary must request such coverage within 30 days of the date COBRA coverage ends.

### **3. Certification of Credible Coverage**

At the time participation in the health plan ends (e.g., at termination and at end of COBRA period) each covered individual will be sent a certificate of credible coverage. This form allows the former plan participants to enroll in another group health plan without any pre-existing exclusions or limitations, provided such enrollment occurs within 63 days of the termination coverage.

## **Chapter 7 – Discipline and Termination of Employment**

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## Chapter 7 – Discipline and Termination of Employment

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### Section VI Retirement

#### Purpose

The purpose of this policy is to provide general information on retirement benefits provided through the Virginia Retirement Service (VRS).

#### Scope

This policy applies to all employees whose LDSS provides retirement benefits through the VRS retirement program. There are LDSS that offer other retirement benefits and if an employee works in such a locality the employee should contact the local jurisdiction's Human Resource office.

#### A. Retirement

##### 1. Mandatory Retirement Age

There is *no* mandatory retirement age.

##### 2. Disability Retirement

Employees who are disabled as defined in the Social Security Act have the option of disability retirement.

##### 3. Retirement Options

###### a. Vesting

An employee is vested after five years of credited service.

###### b. Retirement with Unreduced Benefits

There are several programs that afford an employee retirement with unreduced benefits; each locality elects which option to provide its employees. An employee must check with the LDSS's benefit administrator to see which options are available.

- (1) At age sixty-five (65) with five years of credited service;
- (2) At age sixty (60) with thirty (30) years credited service;
- (3) At age fifty-five (55) with thirty (30) years of credited service;

## Chapter 7 – Discipline and Termination of Employment

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- (4) At age fifty (50) with thirty years of credited service; or
  - (5) At age fifty-five (55) when the sum of the age and years of service equals ninety (90).
- c. Early Retirement – Reduced Benefits
  - (1) At age fifty-five (55) with five (5) years of credited service;
  - (2) If the locality has elected this option, the employee may retire at age fifty (50) with thirty (30) years of service; or
  - (3) The employee may retire at age fifty (50) and ten (10) years of service.
- d. Applying for Service or Disability Retirement
  - (1) Employees considering retirement should apply at least ninety (90) days prior to the date of retirement in order for the paperwork to be processed through VRS. If an employee applies closer to the date of retirement, the first retirement payment might be later than desired and there may be a break in the flow of income.
  - (2) For the most up-to-date information on how to apply for retirement benefits, employees should visit VRS's website at [www.varetire.org](http://www.varetire.org) or call toll-free at 1-888-VARETIRE (1-888-827-3847). An employee may also e-mail an inquiry to the following address: [member\\_info@varetire.org](mailto:member_info@varetire.org).
  - (3) Retirement planning sessions are available through the VRS. Planning schedules/meetings, guides, and informational kits are available on the Members' website at the above address.
  - (4) Some localities also provide retirees with health care credits. Employees should inquire about the availability of this with the LDSS's benefit coordinator.